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SB 175 RELATING TO ENDANGERED AND THREATENED FLORA AND FAUNA

Statement for
Senate Committee on
Agriculture and Environment
Public Hearing - February 7, 1989

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SB 175 proposes that the Hawaii Revised Statutes be amended by adding a new chapter entitled "Interagency cooperation with regard to the conservation of aquatic life, wildlife, and land plants." Our comments on this bill do not represent an institutional position of the University of Hawaii.

Section 1. This section fails to provide the rationale or a statement of purpose as referenced on page 3, line 11. However, we assume that the legislature believed that the need for interagency cooperation with regard to the protection of endangered and threatened species goes without saying and in this need we would certainly concur. Actions by multiple agencies can readily affect endangered or threatened wildlife hence interagency cooperation is essential and the designation of the Department of Land and Natural Resources as the lead agency to implement this coordinative function is appropriate.

As presently drafted, the bill contains a number of language inconsistencies and inappropriate definitions. For example, in the definition of "aquatic life", mollusks, crustaceans, and arthropods, are listed as well as "invertebrates". The later includes the former. We would be pleased to work with the committee to address other language problems.

Paragraph 2. This paragraph is titled "Agency actions and consultation" however, it appears to also involve applicant actions. The distinction between procedures to be followed for applicants as compared to agencies is somewhat unclear throughout the bill.

It appears that only direct actions will come under the review proposed by this bill, yet the secondary effects of some actions can be equally destructive to endangered and threatened species. It also appears that the prospective applicant for a permit or license must request agency consultation and make the initial determination as to the probability of presence or absence of an endangered or threatened species.

Paragraph 4. This paragraph ties the need for biological assessment to the initiation of contracts for construction. The rationale for restricting the statement to "construction" is unclear. We suggest that the phrase "any action" would be more appropriate.

Paragraph 6. Perhaps the most serious deficiency that we see in this bill is the lack of a directive as to the qualifications for the Endangered species committee. As we have indicated in SB 176, committee's whose functions involve management and judgemental decisions with regard to endangered species should have specific competence in that field. We urge this committee to specify technical qualifications for members of the endangered species committee. For example, the State Botanist and Entomologist, should be considered for membership on the committee. Perhaps the existing Animal Species Advisory Committee could be renamed and given the added responsibility to carry out the purposes of this paragraph.

Paragraph 7. This paragraph discusses mitigation but does not establish responsibility for implementation, cost, or enforcement of mitigation.

There is no provision in the proposed legislation for public review of the proposed action or biological assessment. Because the species that would be affected by this bill are by definition rare, and likely to have minimal written documentation as to their ecology, it is particularly important that members of the community specializing in these species be given the opportunity to review and provide their comments to decision makers. We urge that provision for public review prior to decision making be included in this statute.